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No. 95-2090

In the Supreme Court of the United States

OCTOBER TERM, 1995

LARRY FIELDS, DIRECTOR, OKLAHOMA DEPARTMENT OF CORRECTIONS, ET AL., PETITIONERS

v.

BOBBY BATTLE, ETC., AND UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in remanding this case to the district court for an evidentiary hearing with respect to petitioners' motion to terminate previously-entered permanent injunctions.

2. Whether Section 802(a) of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-66 (to be codified at 18 U.S.C. 3626), requires termination of the injunctions.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A5) is unpublished, but the decision is noted at 81 F.3d 172 (Table). The opinion of the district court (Pet. App. B1-B4) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 29, 1996. The petition for a writ of certiorari was filed on June 27, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Respondent Bobby Battle initiated this class action in 1972 on behalf of himself and all other inmates incarcerated within the Oklahoma State Penitentiary (OSP) system. The complaint alleged that petitioners' operation of the State's prisons deprived the class of rights secured by the First, Eighth, and Fourteenth Amendments to the Constitution, in violation of 42 U.S.C. 1983. *Battle* v. *Anderson*, 376 F. Supp. 402, 407 (E.D. Okla. 1974).

In July, 1973, public attention was focused on the serious problems within the Oklahoma penal system because of a riot at the State Penitentiary at McAlester, Oklahoma. *Battle* v. *Anderson*, 614 F.2d 251, 253 (10th Cir. 1980).[1] After the riot, on March, 5, 1974, the United States intervened in the action pursuant to 42 U.S.C. 2000h-2. *Battle* v. *Anderson*, 614 F.2d at 253; *Battle* v. *Anderson*, 564 F.2d 388, 392 (10th Cir. 1977). The United States' initial complaint in intervention alleged that respondents were operating the OSP on a racially segregated basis with respect to housing, work assignments, and other privileges and activities. Gov't C.A. App. 96-97.[2]

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[1] The district court subsequently determined that petitioners' "neglect, apathy and deliberate disregard for human decency and rights contributed directly to the tragic loss of lives and $20 million in state property damages" that resulted from the riot. *Battle* v. *Anderson*, 447 F. Supp. 516, 517 (E.D. Okla. 1977).

[2] The United States subsequently amended its complaint to allege, in addition, arbitrary disciplinary action against inmates of all races, in violation of the Due Process Clause of the Fourteenth Amendment; cruel and unusual conditions of confinement, in violation of the Eighth Amendment; unreasonable restrictions on inmate religious practices and correspondence,

After a bench trial in March, 1974, the district court held that numerous policies, practices, and conditions throughout the OSP system violated the Constitution. Specifically, the court held that petitioners had violated, and continued to violate, the Eighth Amendment's prohibition against cruel and unusual punishment by imposing on prisoners unreasonable and excessive use of chemical agents as a punitive measure, inadequate medical care, and prolonged periods of solitary confinement in unsanitary and dangerous conditions. The court further found that petitioners were engaging in racial segregation and discrimination with regard to inmate housing, discipline, and work assignments; that petitioners' disciplinary procedures violated due process; that OSP restrictions on inmates' receipt of correspondence and periodicals violated the First Amendment; that petitioners were violating the inmates' freedom of religion; and that petitioners were not providing inmates constitutionally adequate access to the courts. *Battle* v. *Anderson*, 376 F. Supp. at 408-428. The court ordered the cessation of the identified unlawful activities and instructed petitioners to formulate a particularized remedial plan. *Id.* at 428-437.

The district court conducted subsequent hearings regarding petitioners' practices and remedial efforts between 1974 and 1977. *Battle* v. *Anderson*, 447 F. Supp. at 517. In 1977, the court concluded, in addition to its prior findings, that overcrowded conditions at certain institutions, combined with inadequate sani-

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in violation of the First Amendment; and infringement of inmates' right of access to the courts. *Battle* v. *Anderson*, 376 F. Supp. at 407-408.

tary, health, and fire protections, violated the Eighth Amendment and "present[ed] an immediate and intolerable threat to the safety and security of inmates, prison personnel and the people of the State of Oklahoma with attendant monetary losses and costs of staggering proportions." *Ibid.* The court also identified numerous instances of non-compliance by petitioners with the court's prior order, and willful recalcitrance by OSP officials. *Id.* at 517-519, 524.

As a result of those findings, the court adopted a remedial order requiring, *inter alia*, gradual population reductions in particular institutions; minimum per-inmate space requirements; and compliance by petitioners with state and federal water and sewage laws. 447 F. Supp. at 526.

In 1979, petitioners submitted to the district court a proposed plan to remedy the continuing violations and non-compliance identified by the court in prior proceedings. In that proposal, petitioners agreed to, among other things, limit the number of inmates per cell at certain institutions; renovate or close certain institutions; bring water, sewage, and electrical systems into compliance with state laws; and bring covered institutions into compliance with the standards of the American Correctional Association and the American Public Health Association. Petitioners further agreed to comply with the district court's prior orders regarding racial segregation, medical care, and access to the courts. Gov't C.A. Br. 4-5. The district court entered petitioners' proposed plan as an order on May 4, 1979. *Id.* at 4; Gov't C.A. App. 132.

2. The court of appeals first addressed the question of the district court's continuing jurisdiction in 1983. *Battle* v. *Anderson*, 708 F.2d 1523

(10th Cir. 1983), cert. dismissed, 465 U.S. 1014 (1984). There, the court observed that "present conditions, as described by the district court, appear constitutionally adequate under the standards set forth in *Rhodes* [v. *Chapman*, 452 U.S. 337 (1981)]." *Id.* at 1537. The court of appeals further held that the district court should retain jurisdiction over the case "until it has eliminated the constitutional violation 'root and branch,'" *id.* at 1538 (quoting *Green* v. *County School Board*, 391 U.S. 430, 438 (1968)), and that the district court "should exercise supervisory power over the suit until it can say with assurance not only that eighth amendment violations do not presently exist but that there is no reasonable expectation that unconstitutional conditions will recur." *Battle* v. *Anderson*, 708 F.2d at 1537.

On June 17, 1983, petitioners submitted a proposed "Plan of Measures to be Taken to Assure Continued Constitutionality of Oklahoma's Prisons." See Gov't C.A. App. 17. In a December 30, 1983, opinion and order, the district court approved and adopted the plan. *Battle* v. *Anderson*, No. 72-95-C (E.D. Okla. Dec. 30, 1983); Gov't C.A. App. 18. Although it found that "disturbances, problems and inadequacies" persisted in the OSP system (Gov't C.A. App. 21), and that petitioners had failed to comply with numerous aspects of its prior orders (*id.* at 21-23), the court held that petitioners were not currently violating the Constitution, and that no reasonable expectation existed "that unconstitutional practices will recur." *Id.* at 23, 24. The court "dismissed th[e] case in its entirety," but expressly held that "[a]ll of this court's orders and injunctions as modified heretofore remain in full force and effect." *Id.* at 24.

The court of appeals affirmed the dismissal, except as it pertained to claims of racial segregation and discrimination. *Battle* v. *Anderson*, 788 F.2d 1421 (10th Cir. 1986).[3] As to those claims, the court remanded to the district court for further proceedings. In affirming the dismissal of the remaining claims, the court of appeals observed that "it is unmistakably clear that the orders and injunctions protecting the inmates against constitutional violations, as previously modified, were in no way intended to be relaxed and that they remain in full force and effect." *Id.* at 1428 n.5. The court further noted that "plaintiffs may by further proceedings in the district court seek relief from any violations of those previous orders and injunctions protecting their constitutional rights." *Id.* at 1429.

3. On March 8, 1994, the plaintiff class filed a "Report to the Court and the Parties on the Status of Compliance," in which it alleged that various conditions and practices within the OSP system violated portions of the extant injunctions. Gov't C.A. Br. 6.[4]

In October, 1994, the class filed a motion to secure compliance with the injunctive orders. Gov't C.A. Br.

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[3] The district court had dismissed the aspects of the injunction pertaining to racial segregation, notwithstanding its finding that "[r]acial integration of the occupants of double cells [was] almost nonexistent in the Oklahoma prison system." *Battle* v. *Anderson*, 788 F.3d at 1425.

[4] The report alleged, for example, that petitioners were housing 12,234 inmates in facilities designed to accommodate a maximum of 8,905 inmates. Gov't C.A. Br. 6-7. The report also averred that petitioners had returned to a pattern of improper disciplinary practices, and alleged a recurrence of the water, fire-safety, sewage, and food preparation hazards that the court had identified in its prior opinions. *Id.* at 7.

7-8. Without affording the class notice or a hearing, the district court denied the motion and, *sua sponte*, terminated the injunctions and its "supervisory jurisdiction," with respect to all areas other than racial segregation. *Battle* v. *Fields*, No. 72-95-C (E.D. Okla. Nov. 17, 1994), slip op. 15; Gov't C.A. App. 47. In so doing, the court held, *inter alia*, that overcrowding and other conditions contrary to the court's orders did not violate the Eighth Amendment (*id.* at 36-44), and that the OSP system had "reached permanent achievement of remedial objectives." *Id.* at 46.

The court of appeals vacated the order and remanded the case for further proceedings. *Battle* v. *Fields*, 59 F.3d 178 (10th Cir. 1995) (Table). Gov't C.A. App. 53-54. Construing the class's motion in the district court as one filed pursuant to Federal Rule of Civil Procedure 60(b)(5), the court of appeals held that the district court's summary disposition of the motion was a "[f]ailure to afford due process protections [and, therefore,] constitute[d] an abuse of the district court's discretion." Gov't C.A. App. 54. The court of appeals' order further provided that "[o]n remand, the district court shall hold a hearing to determine the issues raised by plaintiffs' motions and to determine whether the existing injunctions should be dissolved." *Ibid.*

4. On remand, the district court directed the parties to file briefs "on the issues of whether or not this court should dissolve the prior injunctions in this case as a matter of law." Pet. App. B2. In their filing, the plaintiff class alleged "systemwide violations" of the existing injunctions and contended that the court of appeals' remand entitled them to an evidentiary hearing regarding present conditions at the covered facilities. Gov't C.A. App. 63. The United

States similarly argued that an evidentiary hearing was necessary to facilitate the "inherently complex and fact-intensive inquiry" into the class's allegations, and to determine whether the injunctions should be dissolved. *Id.* at 75. Petitioners moved to dissolve the injunctions and to dismiss the case. See Pet. App. A4-A5.

The district court first concluded that "oral argument and an evidentiary hearing are unnecessary." Pet. App. B2.[5] It then readopted the findings it made in its November 17, 1994 order, "dissolv[ed] the prior injunctions entered herein, and dismiss[ed] this case, except for the Fourteenth Amendment racial segregation issue originally remanded to this court by the Circuit Court in 1986." *Id.* at B4.

5. The court of appeals again vacated the district court's order and remanded the case "for a full and fair evidentiary hearing on the plaintiffs' motion to enforce the injunctions and on the defendants' motion * * * to dissolve the injunctions and dismiss the case." Pet. App. A4-A5.

The court of appeals rejected petitioners' contention that the district court's 1983 finding that then-existing prison conditions comported with the Constitution terminated the case. It observed that the district court's 1994 and 1995 orders recognized the continuing validity of the injunctions, and that the

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[5] In the court's view, "[i]f [it] conducted further evidentiary hearings in accordance with the prior injunctions, the proceedings would necessarily require a retrial of the original case, based on present conditions, but using outdated standards." Pet. App. B3. The court further stated that "[i]f [it] is required to conduct further evidentiary hearings, modification of the prior injunctions will be necessary to comport with existing caselaw." *Ibid.*

court of appeals "previously affirmed the district court's continuing jurisdiction over this litigation and * * * explicitly recognized the continuing viability of the injunctions entered by the [district] court." Pet. App. A3 (citing *Battle* v. *Anderson*, 788 F.2d at 1421, 1428 n.5; *Battle* v. *Anderson*, 708 F.2d at 1538-1539 n.4).

The court also rejected the district court's conclusion that changed legal standards made an evidentiary hearing unnecessary. It observed that "[t]o the extent changed legal standards apply, one of the major purposes of a factual presentation is to establish on a point by point basis how such standards do or do not affect the existing injunctions." Pet. App. A4.[6]

Finally, observing that the district court's conclusion that an evidentiary hearing would be futile created "[t]he appearance, not the fact, of bias," the court of appeals ordered that the case be assigned to a new judge on remand. Pet. App. A5.

6. On July 8, 1996, petitioners filed in the district court a motion to terminate all prospective relief pursuant to the "Immediate Termination of Prospective Relief" provision of Section 802(a) of the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-68 (to be codified at 18 U.S.C. 3626(b)(2)), which was enacted on April 26, 1996. Defendants' Brief on Applicability of PLRA and Motion to Dissolve Injunctions and Terminate All

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[6] In remanding the case, the court observed that "[o]bviously, the hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action." Pet. App. A5.

Prospective Orders with Brief, *Battle* v. *Fields*, No. CIV-72-95-B (E.D. Okla. filed July 8, 1996).

ARGUMENT

Contrary to the court of appeals' explicit instructions, the district court dismissed injunctions designed to remedy identified constitutional violations, without conducting an evidentiary hearing, and without engaging in the fact-intensive inquiry that this Court's decisions require. See, *e.g.*, *Freeman* v. *Pitts*, 503 U.S. 467 (1992); *Rufo* v. *Inmates of Suffolk County Jail*, 502 U.S. 367 (1992); *Board of Education* v. *Dowell*, 498 U.S. 237 (1991). The court of appeals' order remanding the case to allow such an inquiry was correct. Petitioners' contentions regarding the Prison Litigation Reform Act are currently pending before the district court, and should be considered by that court in the first instance.

1. Petitioners' principal contention (Pet. 9) is that the court of appeals' "remand of the case and instruction to the district court to hold an evidentiary hearing went beyond the subject matter jurisdiction and was extra-jurisdictional." That contention is incorrect.

The district court, in its 1983 decision, expressly held that "[a]ll of [its] orders and injunctions as modified heretofore remain in full force and effect." Gov't C.A. App. 24. The court of appeals relied on that aspect of the district court's holding in affirming the decision, *Battle* v. *Anderson*, 788 F.2d at 1428 n.5, 1429, and the injunctions have remained in effect since that time. Where, as here, a party alleges violations of an existing injunctive order, the district court clearly possesses jurisdiction to consider that allegation. See, *e.g.*, *Board of Education* v. *Dowell*,

498 U.S. at 246, 250; cf. *Hutto* v. *Finney*, 437 U.S. 678, 690 (1978). Nor does that jurisdiction dissipate because the court has earlier found that the defendant's affirmative unlawful conduct has ceased. See *Board of Education* v. *Dowell*, 498 U.S. at 248 (courts' remedial authority extends to, *inter alia*, remedying the effects of past unlawful conduct); *Freeman* v. *Pitts*, 503 U.S. at 491 (same); *Milliken* v. *Bradley*, 433 U.S. 267, 280-282 (1977) (same); see also *United States* v. *Parke, Davis & Co.*, 365 U.S. 125, 126 (1961) (ordering district court to "retain the case on the docket for future action in the event the Government applies for further relief from an alleged resumption by [the defendant] of illegal activity").[7]

Institutional injunctions are necessarily temporary in nature, having as their ultimate goals both the remediation of unconstitutional conditions and the return of control to state and local officials. *Missouri* v. *Jenkins*, 115 S. Ct. 2038, 2049 (1995). Nonetheless, in cases such as this one, in which a court has identified systemic constitutional viola-

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[7] Petitioners characterize the plaintiff class's claims of noncompliance as "new allegations." Pet. 13. Those claims, however, relate directly to the enforcement of existing injunctive provisions regarding overcrowding and other conditions of confinement. See Gov't C.A. Br. 6. In remanding the case, moreover, the court of appeals provided that "the hearing will be limited to the issues raised by the parties' filings and cannot be used by the plaintiffs to expand the present case or, in effect, bring a new action." Pet. App. A5. As a result, there is no risk that the evidentiary hearings ordered by the court of appeals will fall outside the district court's remedial jurisdiction.

tions, a court considering the dissolution of existing injunctions must first determine:

> [1] whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn; [2] whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets of the [institution]; and [3] whether the [defendant] has demonstrated * * * its good-faith commitment to the whole of the courts' decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.

Ibid. (quoting *Freeman* v. *Pitts*, 503 U.S. at 491); see also *Board of Education* v. *Dowell*, 498 U.S. at 247; cf. *Lewis* v. *Casey*, 116 S. Ct. 2174, 2183 (1996) (applying principles of *Missouri* v. *Jenkins*, *supra*, to the prison litigation context).

That inquiry is necessarily fact-intensive and requires review of both past conduct and current conditions. Careful factual review is particularly important where, as here, there has been a history of noncompliance by the defendant, and the plaintiff class alleges current unconstitutional conduct.

Contrary to petitioners' contention (Pet. 11), the district court's 1983 decision did not satisfy that standard. In addition to expressly leaving all injunctions in effect (Gov't C.A. App. 24), the court made no finding that prison officials had complied with the court's orders to the extent practicable, or that, *in the absence of the existing injunctions*, there was no

reasonable probability that constitutional violations would recur.[8]

Nor was the district court's refusal to conduct an evidentiary hearing justified by its assertion that "modification of the prior injunctions [would] be necessary to comport with existing caselaw." Pet. App. B3. As the court of appeals observed (*id.* at A4), the effect of changed legal circumstances on an existing injunction cannot be determined without an inquiry regarding present conditions. See generally *Rufo* v. *Inmates of Suffolk County Jail*, *supra*. Assuming, *arguendo*, that subsequent judicial decisions have altered the law on which the injunctions in this case were predicated, the district court may modify the injunctions accordingly after conducting the factual inquiry ordered by the court of appeals. See Fed. R. Civ. P. 60(b).

Finally, this Court ordinarily does not review interlocutory decisions such as the remand for additional proceedings at issue here. See *Virginia Military Institute* v. *United States*, 508 U.S. 946 (1993)

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[8] The district court's 1983 finding that no reasonable likelihood existed "that unconstitutional practices will recur" (Gov't C.A. App. 23) was made in connection with its holding that "[a]ll of this court's orders and injunctions as modified heretofore remain in full force and effect." *Id.* at 24. The court of appeals, in turn, affirmed the district court's decision based in part on its conclusions that "the orders and injunctions protecting the inmates against constitutional violations, as previously modified, * * * remain in full force and effect" (788 F.2d at 1428 n.5), and that "plaintiffs may by further proceedings in the district court seek relief from any violations of those previous orders and injunctions protecting their constitutional rights." *Id.* at 1429. The district court's 1983 decision did not indicate that the injunctions were no longer necessary to prevent a return to unconstitutional conditions.

(opinion of Scalia, J., respecting denial of certiorari); *Brotherhood of Locomotive Firemen* v. *Bangor & Aroostock R.R.*, 389 U.S. 327, 328 (1967) (per curiam); R. Stern, E. Gressman, & S. Shapiro, *Supreme Court Practice* § 4.18, at 195-198 (7th ed. 1993). The lack of finality of the judgment below is thus "of itself alone" a "sufficient ground for the denial of the [writ]." *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

2. Petitioners contend (Pet. 14-15) that "no case or controversy exists" here, in light of the "Immediate Termination of Prospective Relief" provision of Section 802(a) of the Prison Litigation Reform Act (PLRA), Pub. L. No. 104-134, Tit. VIII, 110 Stat. 1321-68 (to be codified at 18 U.S.C. 3626(b)(2)). That Section provides:

> In any civil action with respect to prison conditions, a defendant or intervener shall be entitled to the immediate termination of any prospective relief if the relief was approved or granted in the absence of a finding by the court that the relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

The "Limitation" provision of Section 802(a) of the PLRA provides:

> Prospective relief shall not terminate if the court makes written findings based on the record that prospective relief remains necessary to correct a current or ongoing violation of the Federal right, extends no further than necessary to correct the violation of the Federal right, and that the pro-

> spective relief is narrowly drawn and the least intrusive means to correct the violation.

110 Stat. at 1321-68 (to be codified at 18 U.S.C. 3626(b)(3)).

The PLRA (Title VIII of the Omnibus Consolidated Rescissions and Appropriations Act of 1996) was enacted on April 26, 1996. Pub. L. No. 104-134, 110 Stat. 1321. As a result, it was not considered by either court below. Certiorari to consider the effect of the PLRA on this case is therefore unwarranted at this time. *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 163-164 (1975).

Petitioners' motion to terminate all prospective relief pursuant to the PLRA is currently pending before the district court. Defendants' Brief on Applicability of PLRA and Motion to Dissolve Injunctions and Terminate All Prospective Orders with Brief, *Battle* v. *Fields*, No. CIV-72-95-B (E.D. Okla. filed July 8, 1996). That court is in the best position to determine, in the first instance, whether the findings set out in the "Immediate Termination" provision of the PLRA have been made during the course of this litigation, and, if not, whether the injunctions should nevertheless be preserved under the PLRA's "Limitation" provision because the "relief remains necessary to correct a current or ongoing violation of the Federal right."[9] Petitioners' pending motion to terminate relief under the PLRA buttresses the need for an evidentiary hearing as to current conditions within the OSP system, and emphasizes the

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[9] The class's allegations of current overcrowding and other unconstitutional conditions are directly relevant to that inquiry.

inappropriateness of review of the PLRA issue by this Court at this time.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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